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C O N F I D E N T I A L BOGOTA 001027

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SUBJECT: JUSTICE AND FOREIGN MINISTERS PROPOSE WAY FORWARD
ON EXTRADITION

Classified By: Ambassador William R. Brownfield,
Reasons 1.4 (b and d)

SUMMARY

1 (C) Justice and Interior Minister Fabio Valencia Cossio, Foreign Minister Jaime Bermudez, and other GOC officials explained the Colombian Supreme Court's reasoning in denials in extradition cases to the Ambassador on March 26. Valencia said both the Executive Branch and the Supreme Court remain committed to extradition. The Supreme Court had denied recent extradition requests based on two grounds in February: 1) double jeopardy, and 2) a perceived failure to demonstrate a clear link to the United States in the crime. To address double jeopardy, the Ministers said the Court encouraged the USG to ensure that its charges include some criminal provision not present in any Colombian charge or investigation (in addition to, not in lieu of). Regarding U.S. links, the Court suggested that future requests always highlight any U.S. nexus, however small, as clearly as possible. The GOC officials stressed that further requests for the Court to reconsider the denials in the "Gafas" and "Cesar" cases would offend the Court. They suggested that an informal Embassy approach to the Court in the pending "Martin Sombra" extradition request would be more effective. Valencia also proposed ways the Embassy and MOIJ could work more closely to improve extradition requests. After the meeting, the GOC issued a statement noting that the U.S.-Colombian extradition relationship remains strong. End Summary.

MEETING CALLED TO LOWER TENSIONS OVER EXTRADITIONS

12. (C) On March 26, the Ambassador, DCM, and Judicial Attache attended a meeting hosted by Justice and Interior Minister (MOIJ) Fabio Valencia Cossio. Foreign Affairs Minister Jaime Bermudez, Presidential Legal Counsel Edmundo del Castillo, Vice Justice Minister Miguel Ceballos, Special Advisor to the MOIJ Alejandra Uribe, and MOIJ Extradition Assistant Carolina Boyona also participated.

13. (C) Valencia requested the meeting to discuss recent Supreme Court denials of U.S. extradition requests for Revolutionary Armed Forces of Colombia (FARC) members Gerardo Antonio Aguilar Ramirez (aka Cesar) and Alexander Farfan Suarez (aka Enrique Gafas) on "lack of extraterritorial acts" grounds, as well as the denial of U.S. request for accused narcotrafficker Fredy Ferney Gonzalez Monsalve on "double jeopardy" grounds. He said President Uribe and other GOC officials had met the day before with Supreme Court

magistrates to discuss extradition issues, including the Court's adverse reaction to our March 6 diplomatic note seeking the reconsideration of the Court's decisions in the "Gafas" and "Cesar" cases. Valencia reiterated Uribe's commitment to extradition and attributed the current tensions over extradition to poor internal GOC communication. (Note: It is our understanding that the MFA never passed our note to the Court, so the Ministers were being a bit disingenuous here. End note.) He said both the executive and judiciary agreed that extradition was "untouched" ("incolume") by the recent decisions.

RATIONALE FOR DENIALS

14. (C) Valencia said the Court denied the extradition requests for "Cesar" and "Gafas" based on Colombia's Constitutional requirement that its citizens only be extradited for crimes "committed abroad." The Court ruled that there was no extraterritorial nexus in the "Cesar" and "Gafas" cases, despite the kidnapping of three U.S. citizens.

Valencia said the magistrates had told the executive they would approve extradition in cases where there were overt acts that indicated a &nexus8 or a &connection8 to the United States. Foreign Minister Bermudez was especially insistent on the need that U.S. extradition requests show a U.S.nexus. Both Ministers explained that the extradition request need only refer to a tangential link, such as a telephone call to a U.S. co-conspirator or victim. When addressing FARC cases, FM Bermudez suggested highlighting the FARC's role as a narcotics trafficking organization to establish the international nexus. (Comment: There remains some confusion over the Court's stance, since it has spoken

of the need for "extraterritorial effects," "extraterritorial acts," and now a foreign "nexus" to justify extradition. End Comment)

15. (C) On "double jeopardy," Valencia said the Supreme Court was concerned with the USG seeking extradition of Colombian citizens on the same charges and conduct for which they were being tried or had been convicted in Colombia. Supreme Court magistrates noted that the Inspector General (Procurador General) had cautioned the judiciary on this point immediately prior to the Gonzalez Monsalve decision. In that case, Gonzalez Monsalve's domestic appeal came before the Court just prior to his extradition request. It appeared that both addressed the same crime. MOI Extradition Advisor Carolina Boyona said these concerns could be avoided if the USG inserted in its extradition requests/indictment packages either distinct, overt acts that were not contained in the Colombian case or criminal charges that were distinct from those filed in Colombia. The Court was not concerned with the USG investigating the same criminal conduct, but wanted to see additional elements in the U.S. request. For example, the GOC could charge an individual with narcotics trafficking, while the USG could charge the person with conspiracy to commit narcotics trafficking. Prior to the Gonzalez Monsalve denial, the Supreme Court had always left the question of double jeopardy to the executive to determine. The Court has now changed that policy.

GOC: BACK OFF ON THESE CASES

16. (C) The GOC officials urged that we desist for now from any further requests that the Court reconsider the "Cesar" and "Gafas" denials, saying further U.S pressure would offend the Court. They suggested it might be appropriate for the USG to seek the extradition of "Gafas" on narco-trafficking charges in the future, but cautioned that tensions were too high to do so right now. They further said that a separate diplomatic note concerning the pending extradition request for Heli Mejia Mendoza ("Martin Sombra") would likely further irritate the Court and be counterproductive. Valencia suggested instead that the Embassy approach the Supreme Court informally to gauge its response to a less formal communication on "Sombra," adding that an Embassy letter directly to the Court might be less offensive.

¶7. (C) Still, Vice Minister Ceballos said that if the USG wanted to continue to pursue "Cesar" and "Gafas" on kidnapping charges, we should consider asserting that the three U.S. citizen ex-hostages were "Internationally Protected Persons" at the time of their capture by the FARC.

He asserted that such an approach might prompt the Court,s reconsideration of its negative decisions in the "Cesar" and "Gafas" cases. A similar assertion would also strengthen our request for "Martin Sombra." The Embassy is confirming that the three ex-hostages were afforded some privileges and immunities related to their official duties when they were captured by the FARC. Vice Minister Ceballos and Extradition Advisor Boyona observed that the Court had not based its decisions in international law in the past, but that the MOIJ would make an effort to educate the Court on its international obligations.

BOTH SIDES SUGGEST WAYS TO IMPROVE PROCESS

¶8. (C) Valencia said that a key result of the executive-Court meeting was an agreement by both sides that the executive should work with the Embassy to develop a mechanism to improve extradition requests. To that end, he stated that the Ministry,s Extradition Office would be increased in size and funding to allow it to work closely with the Embassy in perfecting extradition packages. The GOC also proposed that we submit the extradition packages earlier to give it more time to assist with this process. The Ambassador welcomed Valencia's suggestions, noting that the GOC might also look for ways to relax the current 60-day submission period (from time of submission of the provisional arrest warrant) for extradition requests. This would give the MOIJ time to review a draft extradition package and suggest improvements prior to its formal submission to the GOC.

¶9. (C) The Ambassador suggested that the MOIJ might represent the Embassy in extradition hearings before the Supreme Court,s Criminal Chamber, noting that the Embassy is currently limited to submitting a written extradition package while the extraditable's legal counsel is entitled to argue before the Supreme Court. The GOC officials said this might be problematic given the potential conflict of interest with MOIJ's role as the GOC's designated administrative authority in authorizing an extradition after the Supreme Court has approved it. As an alternative, they suggested that the Prosecutor General's office (Fiscalia) might be able to play such a role. After the meeting, the GOC issued a press statement reaffirming the strength of the U.S-Colombian extradition relationship and noting that it had conveyed the Supreme Court's concerns to the USG. Separately, the Ambassador apologized for any confusion that might have been generated by his comments on the issue.

BROWNFIELD